

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS**

**DOMONIQUE NATASHA BRIGGS and  
SAMAR HASSAN, on behalf of themselves and  
all others similarly situated,**

**Plaintiffs,**

**-against-**

**PNC FINANCIAL SERVICES GROUP, INC.  
and PNC BANK, N.A.,**

**Defendants.**

No. 15 Civ. 10447

Hon. Amy J. St. Eve

**INDEX OF EXHIBITS TO  
PLAINTIFFS' MOTION FOR PROTECTIVE ORDER  
REGARDING THE DEPOSITIONS OF PLAINTIFFS  
DOMONIQUE BRIGGS AND SAMAR HASSAN**

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# **EXHIBIT A**

# Morgan Lewis

**Kevin F. Gaffney**

Associate

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kgaffney@morganlewis.com

January 6, 2016

**VIA FACSIMILE AND FEDEX**

Christopher McNerney  
Olivia Jardinado Quinto-Reyes  
Justin Mitchell Swartz  
Paul William Mollica  
Outten & Golden, LLP  
3 Park Avenue, 29<sup>th</sup> Floor  
New York, NY 10016

Douglas M. Werman  
Maureen Ann Salas  
Werman Salas P.C.  
77 West Washington  
Suite 1402  
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Gregg L. Shavitz  
Camar Ricardo Jones  
Susan H. Stern  
Shavitz Law Group, P.A.  
1515 South Federal Highway  
Suite 404  
Boca Raton, FL 33432

Re: *Domonique Natasha Briggs and Samar Hassan v. PNC Financial Services Group, Inc. and PNC Bank*  
Court No: 15-cv-10447

Dear Counsel:

Enclosed please find our Notices of Videotaped Depositions of Plaintiffs Domonique Natasha Briggs and Samar Hassan.

Sincerely,



Kevin F. Gaffney

KFG/aa

Enclosures

**Morgan, Lewis & Bockius LLP**

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS**

DOMONIQUE NATASHA BRIGGS and  
SAMAR HASSAN, on behalf of themselves  
and all others similarly situated,

Plaintiffs,

v.

PNC FINANCIAL SERVICES GROUP, INC.,  
and PNC BANK, N.A.,

Defendants.

Case No. 15 CV 10447

Honorable Amy J. St. Eve

**NOTICE OF VIDEOTAPED DEPOSITION OF**

**PLAINTIFF SAMAR HASSAN**

**TO:**

Christopher McNerney  
Olivia Jardinado Quinto-Reyes  
Justin Mitchell Swartz  
Paul William Mollica  
Outten & Golden, LLP  
3 Park Avenue, 29<sup>th</sup> Floor  
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(212) 245-1000

*Attorneys for Plaintiffs*

Gregg L. Shavitz  
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1515 South Federal Highway  
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*Attorneys for Plaintiffs*

---

Douglas M. Werman  
Maureen Ann Salas  
Werman Salas P.C.  
77 West Washington  
Suite 1402  
Chicago, Illinois 60602  
(312) 419-1008

*Attorney for Plaintiffs*

PLEASE TAKE NOTICE that Defendants PNC Financial Services Group, Inc. and PNC Bank, N.A. will take the deposition of plaintiff Samar Hassan on Wednesday, January 27, 2016 at 9:30 a.m., upon oral examination and pursuant to the Federal Rules of Civil Procedure, before a Notary Public or before any other officer duly authorized to administer oaths, at the law office of Morgan, Lewis & Bockius LLP, 77 West Wacker Drive, Chicago, Illinois 60601. The deposition will be recorded by stenographic and video recorded means and continue day-to-day thereafter until completion.

Dated: January 6, 2016

Respectfully submitted,

PNC FINANCIAL SERVICES GROUP, INC.  
and PNC BANK, N.A.

By: /s/ Kevin F. Gaffney  
One of Their Attorneys

Sari M. Alamuddin  
Kevin F. Gaffney  
MORGAN, LEWIS & BOCKIUS LLP  
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Sarah E. Bouchard (*pro hac vice*)  
Lauren E. Marzullo (*pro hac vice*)  
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[lmorzullo@morganlewis.com](mailto:lmorzullo@morganlewis.com)

*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

I, Kevin Gaffney, an attorney, certify that I served a copy of the foregoing NOTICE OF VIDEOTAPED DEPOSITION OF SAMAR HASSAN on the following counsel of record via e-mail and Federal Express on January 6, 2016:

Christopher McNerney ([cmcnerney@outtengolden.com](mailto:cmcnerney@outtengolden.com))  
Olivia Jardinado Quinto-Reyes ([ojq@outtengolden.com](mailto:ojq@outtengolden.com))  
Justin Mitchell Swartz ([jms@outtengolden.com](mailto:jms@outtengolden.com))  
Paul William Mollica ([pwmollica@outtengolden.com](mailto:pwmollica@outtengolden.com))

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Douglas M. Werman ([dwerman@flsalaw.com](mailto:dwerman@flsalaw.com))  
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Camar Ricardo Jones ([cjones@shavitzlaw.com](mailto:cjones@shavitzlaw.com))  
Susan H. Stern ([sstern@shavitzlaw.com](mailto:sstern@shavitzlaw.com))

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(561) 447-8888

/s/ Kevin F. Gaffney

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS**

DOMONIQUE NATASHA BRIGGS and  
SAMAR HASSAN, on behalf of themselves  
and all others similarly situated,

Plaintiffs,

v.

PNC FINANCIAL SERVICES GROUP, INC.,  
and PNC BANK, N.A.,

Defendants.

Case No. 15 CV 10447

Honorable Amy J. St. Eve

**NOTICE OF VIDEOTAPED DEPOSITION OF**

**PLAINTIFF DOMONIQUE NATASHA BRIGGS**

**TO:**

Christopher McNerney  
Olivia Jardinado Quinto-Reyes  
Justin Mitchell Swartz  
Paul William Mollica  
Outten & Golden, LLP  
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*Attorneys for Plaintiffs*

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Douglas M. Werman  
Maureen Ann Salas  
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77 West Washington  
Suite 1402  
Chicago, Illinois 60602  
(312) 419-1008

*Attorney for Plaintiffs*



PLEASE TAKE NOTICE that Defendants PNC Financial Services Group, Inc. and PNC Bank, N.A. will take the deposition of plaintiff Domonique Natasha Briggs on Monday, January 25, 2016 at 9:30 a.m., upon oral examination and pursuant to the Federal Rules of Civil Procedure, before a Notary Public or before any other officer duly authorized to administer oaths, at the law office of Morgan, Lewis & Bockius LLP, 77 West Wacker Drive, Chicago, Illinois 60601. The deposition will be recorded by stenographic and video recorded means and continue day-to-day thereafter until completion.

Dated: January 6, 2016

Respectfully submitted,

PNC FINANCIAL SERVICES GROUP, INC.  
and PNC BANK, N.A.

By: /s/ Kevin F. Gaffney  
One of Their Attorneys

Sari M. Alamuddin  
Kevin F. Gaffney  
MORGAN, LEWIS & BOCKIUS LLP  
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Sarah E. Bouchard (*pro hac vice*)  
Lauren E. Marzullo (*pro hac vice*)  
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*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

I, Kevin Gaffney, an attorney, certify that I served a copy of the foregoing NOTICE OF VIDEOTAPED DEPOSITION OF DOMONIQUE NATASHA BRIGGS on the following counsel of record via e-mail and Federal Express on January 6, 2016:

Christopher McNerney ([cmcnerney@outtengolden.com](mailto:cmcnerney@outtengolden.com))  
Olivia Jardinado Quinto-Reyes ([ojq@outtengolden.com](mailto:ojq@outtengolden.com))  
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/s/ Kevin F. Gaffney

# **EXHIBIT B**

**Douglas M. Werman**

---

**From:** Susan Stern <sstern@shavitzlaw.com>  
**Sent:** Monday, January 11, 2016 10:54 AM  
**To:** Douglas M. Werman  
**Cc:** Gregg Shavitz; jms@outtengolden.com; Camar Jones; Maureen Salas; McNerney, Christopher (cmcnerney@outtengolden.com); Quinto, Olivia  
**Subject:** FW: Briggs v. PNC  
**Attachments:** (86049892)\_(1)\_Briggs\_PNC - Markup of Plaintiffs\_ Proposed Joint Initial Status Report.DOC

Doug, can we discuss this and get back to the defendant since this is due today? Also, does anyone else see redlines because I don't.

**Susan H. Stern, Esq.**  
SHAVITZ LAW GROUP, P.A.  
1515 S. Federal Highway, Suite 404  
Boca Raton, Florida 33432  
Phone: 561-447-8888  
[www.shavitzlaw.com](http://www.shavitzlaw.com)

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---

**From:** Marzullo, Lauren E. [mailto:lmorzullo@morganlewis.com]  
**Sent:** Friday, January 08, 2016 1:11 PM  
**To:** Douglas M. Werman; Susan Stern  
**Cc:** Alamuddin, Sari M.; Gaffney, Kevin F.; Bouchard, Sarah E.; Justin Swartz; Gregg Shavitz; Camar Jones; Maureen Salas  
**Subject:** RE: Briggs v. PNC

Doug:

Thank you for following up. Attached is our proposed markup of the report. As the markup reflects, PNC is willing to compromise by seeking only the two named plaintiffs' depositions (per the notices we served on Wednesday) and deferring all other discovery until after a ruling on Plaintiffs' motion for conditional certification. Please let us know if you have any questions or comments.

Thank you,

**Lauren Marzullo**  
**Morgan, Lewis & Bockius LLP**  
One Oxford Centre Thirty-Second Floor 301 Grant Street | Pittsburgh PA 15219-6401  
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Assistant: Marsha L. Josapak | 412.560.7443 | [marsha.josapak@morganlewis.com](mailto:marsha.josapak@morganlewis.com)

**From:** Douglas M. Werman [<mailto:dwerman@flsalaw.com>]

**Sent:** Friday, January 08, 2016 10:03 AM

**To:** Marzullo, Lauren E.; Susan Stern

**Cc:** Alamuddin, Sari M.; Gaffney, Kevin F.; Bouchard, Sarah E.; Justin Swartz; Gregg Shavitz; Camar Jones; Maureen Salas

**Subject:** RE: Briggs v. PNC

Lauren: This is a follow-up to our conference call regarding the status report and conversation about discovery.

Have you spoken further with your client about our dispute over the timing of discovery? Please confirm if a further meet and confer is warranted or if we are at impasse on the issue of discovery prior to Defendant filing its response to Plaintiffs' step one motion for notice.

Please also provide me any proposed changes you have to the status report. The report must be filed on Monday, January 11, 2016. Thanks.

Doug Werman

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website: [www.flsalaw.com](http://www.flsalaw.com)  
twitter: @WermanSalas

**From:** Marzullo, Lauren E. [<mailto:lmorzullo@morganlewis.com>]

**Sent:** Monday, December 28, 2015 1:46 PM

**To:** Susan Stern <[sstern@shavitzlaw.com](mailto:sstern@shavitzlaw.com)>; Douglas M. Werman <[dwerman@flsalaw.com](mailto:dwerman@flsalaw.com)>

**Cc:** Alamuddin, Sari M. <[salamuddin@morganlewis.com](mailto:salamuddin@morganlewis.com)>; Gaffney, Kevin F. <[kgaffney@morganlewis.com](mailto:kgaffney@morganlewis.com)>; Bouchard, Sarah E. <[sbouchard@morganlewis.com](mailto:sbouchard@morganlewis.com)>; Justin Swartz <[JMS@outtengolden.com](mailto:JMS@outtengolden.com)>; Gregg Shavitz <[gshavitz@shavitzlaw.com](mailto:gshavitz@shavitzlaw.com)>; Camar Jones <[cjones@shavitzlaw.com](mailto:cjones@shavitzlaw.com)>; Maureen Salas <[msalas@flsalaw.com](mailto:msalas@flsalaw.com)>

**Subject:** RE: Briggs v. PNC

Hi Susan: We can be available on 1/6. Please let us know what time works best for you.

Thank you,

**Lauren Marzullo**

**Morgan, Lewis & Bockius LLP**

One Oxford Centre Thirty-Second Floor 301 Grant Street | Pittsburgh PA 15219-6401

Direct: 412.560.7407 | Main: 412.560.3300 | Fax: 412.560.7001

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**From:** Susan Stern [<mailto:sstern@shavitzlaw.com>]

**Sent:** Thursday, December 24, 2015 12:16 PM

**To:** Marzullo, Lauren E.; Douglas M. Werman

**Cc:** Alamuddin, Sari M.; Gaffney, Kevin F.; Bouchard, Sarah E.; Justin Swartz; Gregg Shavitz; Camar Jones; Maureen Salas

**Subject:** RE: Briggs v. PNC

Hi Lauren,

In light of the holidays, next week just won't work. We are available on Jan 5 or 6 which should allow us sufficient time to submit by the Jan 11 deadline and Plaintiffs can circulate a draft report before our call. Please let us know when on Jan 5 or 6 works for you.

Happy Holidays.

**Susan H. Stern, Esq.**  
SHAVITZ LAW GROUP, P.A.  
1515 S. Federal Highway, Suite 404  
Boca Raton, Florida 33432  
Phone: 561-447-8888  
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---

**From:** Marzullo, Lauren E. [<mailto:lmorzullo@morganlewis.com>]  
**Sent:** Wednesday, December 23, 2015 4:36 PM  
**To:** Douglas M. Werman  
**Cc:** Alamuddin, Sari M.; Gaffney, Kevin F.; Bouchard, Sarah E.; Justin Swartz; Gregg Shavitz; Camar Jones; Maureen Salas; Susan Stern  
**Subject:** RE: Briggs v. PNC

Doug:

Thank you for the quick response. We would prefer to schedule the conference sometime next week. Please let us know availability on your side next week.

Thank you,

**Lauren Marzullo**  
**Morgan, Lewis & Bockius LLP**  
One Oxford Centre Thirty-Second Floor 301 Grant Street | Pittsburgh PA 15219-6401  
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---

**From:** Douglas M. Werman [<mailto:dwerman@flsalaw.com>]  
**Sent:** Wednesday, December 23, 2015 4:26 PM  
**To:** Marzullo, Lauren E.  
**Cc:** Alamuddin, Sari M.; Gaffney, Kevin F.; Bouchard, Sarah E.; Justin Swartz; Gregg Shavitz; [cjones@shavitzlaw.com](mailto:cjones@shavitzlaw.com); Maureen Salas; [sstern@shavitzlaw.com](mailto:sstern@shavitzlaw.com)  
**Subject:** Re: Briggs v. PNC

In light of the briefing schedule (and my vacation) and knowing this judge, I think the conference can wait until just after the first of the year. If you want to have it next week, let me know and I'll get someone else on our side involved. Otherwise, let's plan on 1/5 or 1/6. Thanks.

On Dec 23, 2015, at 9:51 AM, Marzullo, Lauren E. <[lmarzullo@morganlewis.com](mailto:lmarzullo@morganlewis.com)> wrote:

Doug:

I believe our Rule 26(f) conference is due in this matter. Will you please let us know plaintiffs' counsel's availability next week for a telephonic conference?

Thank you,

**Lauren Marzullo**

**Morgan, Lewis & Bockius LLP**

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# **EXHIBIT C**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

ROBERT O'TOOLE, et al.,

Plaintiffs,

-vs-

SEARS, ROEBUCK & CO.,

Defendant.

No. 11 C 4611

Chicago, Illinois  
October 6, 2011  
9:00 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS - STATUS  
BEFORE THE HONORABLE MILTON I. SHADUR

APPEARANCES:

For the Plaintiffs:

WERMAN LAW OFFICE P.C.  
77 West Washington Street  
Suite 1402  
Chicago, Illinois 60602  
BY: MR. DOUGLAS M. WERMAN

For the Defendant:

LITTLER MENDELSON, P.C.  
321 North Clark Street  
Suite 1000  
Chicago, Illinois 60654  
BY: MR. JAMES J. OH

Court Reporter:

ROSEMARY SCARPELLI  
219 South Dearborn Street  
Room 2304A  
Chicago, Illinois 60604  
(312) 435-5815

1 THE CLERK: 11 C 4611, O'Toole versus Sears  
2 Holdings.

3 MR. WERMAN: Good morning, Judge, Doug Werman,  
4 W-E-R-M-A-N, for plaintiffs.

5 MR. OH: Good morning, your Honor, James Oh, last  
6 name spelled O-H, for the defendants.

7 THE COURT: Good morning. Well, before I turn to a  
8 couple of items that ought to be modified in the submission,  
9 let me find out what -- and, by the way, one of them is  
10 certainly that the name of the plaintiff -- defendant rather  
11 ought to be changed.

12 MR. WERMAN: Yeah. And -- yes, Judge.

13 THE COURT: You know, there was a recent -- as you  
14 know, there was a recent change to Sears Roebuck & Company  
15 from the holding corporation.

16 MR. WERMAN: Which is -- I am sorry.

17 THE COURT: Okay. Now, but let me ask something  
18 about that. You know, I don't know anything about Sears'  
19 internal corporate structuring, but are all of the putative  
20 or potential class members employed by Sears Roebuck &  
21 Company so that there is no other subsidiary or affiliate  
22 that is involved?

23 MR. WERMAN: Judge, that is what I was going to  
24 address. There has been some further discussions between the  
25 parties and there has been agreement that we are going to

1 further amend the complaint to add what we think are the  
2 correct corporate entities. Sears is operating through many  
3 different entities.

4 THE COURT: Yeah.

5 MR. WERMAN: And it has been difficult to kind of  
6 figure it all out. We have done that. And we are going to  
7 be amending the complaint to add Sears Holding Management  
8 Corp., Kmart Corp. and Sears Holding Corp.. Sears Holding  
9 Management Corp. is actually the operation -- the operational  
10 entity that is actually employing individuals, as far as we  
11 understand. And Sears Holding Corp. is the publicly-traded  
12 entity.

13 THE COURT: Yeah.

14 MR. WERMAN: The plaintiffs work for Kmart and  
15 Sears. And at this point in time it is our position that it  
16 is one and the same.

17 MR. OH: Your Honor, if I may.

18 THE COURT: Yes.

19 MR. OH: Yes, after the complaint was filed, I did  
20 speak with Mr. Werman and his co-counsel Mr. Josephson at a  
21 time when we thought this was just a Sears Roebuck case --

22 THE COURT: Yes.

23 MR. OH: -- involving loss prevention managers  
24 inside Sears stores only. And that is when I approached them  
25 about the employer of the employees inside the Sears stores

1 is Sears Roebuck & Company.

2 THE COURT: Yeah.

3 MR. OH: And that is why we filed our motion. As  
4 -- there has been four consents filed to join the lawsuit.  
5 Turns out two of them are employees of Kmart. And so I  
6 called him up and I told him, looks like you guys have two  
7 Kmart people; the employer of the employees inside Kmart  
8 stores is Kmart Corp. And that is when I suggested --

9 THE COURT: Okay.

10 MR. OH: -- to them that Kmart Corp. probably  
11 should be added as a defendant.

12 I don't necessarily agree that either of the  
13 holding companies, Sears Holding Corp. or Sears Holding  
14 Management Corporation -- or Company should be in this case  
15 because we will have the two employers of the opt-ins who  
16 have joined this lawsuit. Sears Holdings Corporation is a  
17 pure holding company with no employees. Sears Holdings --

18 THE COURT: Yeah, I had thought that that was the  
19 reason for getting them out to begin with.

20 MR. OH: Right. Well, they had named Sears  
21 Holdings Management --

22 THE COURT: Management, right.

23 MR. OH: -- Corp. Sears -- SHMC is a service  
24 corporation to the two operating companies. They do -- Sears  
25 Holdings Management Corp. does have employees that provide

1 some operational support to these two entities, Sears Roebuck  
2 and Kmart.

3 THE COURT: But not necessarily as loss prevention,  
4 right?

5 MR. OH: There might be. And I wasn't going to  
6 make an issue of having Sears -- anyone they want to add in  
7 now.

8 THE COURT: Okay.

9 MR. OH: If they want to file an amended complaint,  
10 I can accept service.

11 THE COURT: Sure.

12 MR. OH: And I will preserve our defenses with  
13 respect to who the proper defendants are and --

14 THE COURT: Right.

15 MR. OH: -- worry about that later I think.

16 THE COURT: Okay. Now, that obviously makes the  
17 motion for notice to potential class members premature  
18 because you haven't got the right targets necessarily, right?

19 MR. WERMAN: I actually think it is a -- I think  
20 the -- it is not premature. I think we can proceed on it. I  
21 think all that needs to happen, Judge, is we just need to  
22 tweak the form of the notice documents --

23 THE COURT: Okay.

24 MR. WERMAN: -- that would be sent out. But in  
25 terms of it being properly supported with evidentiary

1 materials, I think we are prepared to proceed with that  
2 motion at this time.

3 THE COURT: Okay.

4 MR. WERMAN: But we do intend to modify the notice  
5 documents.

6 THE COURT: Well, let me turn then to Sears counsel  
7 and ask you about this one. As you know, it is Exhibit D to  
8 the -- to the present motion. I did have a couple of issues  
9 about it, but let me find out from your perspective. The  
10 purpose of this, obviously, is to -- is -- given the nature  
11 of the structuring of this kind of action is to stop the  
12 clock running in terms of limitations on as many people as it  
13 is possible to do. Or more accurately I guess, from the  
14 plaintiffs' point of view, to get as big a time frame in as  
15 to people.

16 What -- do you have substantive objections to the  
17 idea of sending out a current notification? That is question  
18 one. And question two is, do you have a problem as to the  
19 form that has been tendered?

20 MR. OH: Your Honor, we do have substantive  
21 objections to notice going out in this particular case. My  
22 understanding was that at the last status when they said they  
23 would be filing their motion for a notice with -- shortly, my  
24 partner who was here asked if we would be able to take any  
25 discovery before that motion got filed or before we

1       responded. And I -- my understanding was --

2               THE COURT: But my question I think then was, what  
3       discovery? I mean, you know, they -- I am not buying their  
4       claim necessarily, but certainly no discovery is needed in  
5       order --

6               MR. OH: Well --

7               THE COURT: -- to pose this kind of an action.

8               MR. OH: Well, your Honor, I --

9               THE COURT: I mean there may be a question, for  
10       example, about whether the people are proper representatives,  
11       but that doesn't have to wait on -- that doesn't have to be  
12       resolved before a notice goes out to potential parties to  
13       permit them to opt-in.

14              MR. OH: I -- I actually kind of think it does  
15       personally, I mean in the sense of the two-tiered process,  
16       the two-stage process, that applies to these FLSA cases is  
17       one that has developed ad hoc through the years through --  
18       through case law. There is nothing in the statute or in the  
19       Federal Rules that really countenanced this approach. And  
20       one of the substantive objections I have to this motion at  
21       this point in time that I wanted to brief was what, if any,  
22       impact the Supreme Court's decision in Dukes versus Wal-Mart  
23       has on cases like this.

24              Now, I understand that the Dukes --

25              THE COURT: Well, you can be my guest on that. But



1 at the same time there is no reason that they cannot send  
2 this out. Remember that the notice is properly cautionary  
3 about saying that Sears --

4 MR. OH: But --

5 THE COURT: -- objects, says that this doesn't  
6 apply. It gives no assurances that there is any -- about the  
7 validity of the claim or that there is going to be any  
8 recovery. So nobody is harmed by the notice going out.

9 MR. OH: With all due respect, your Honor, the harm  
10 comes --

11 THE COURT: You know, I hate that phrase because it  
12 is -- it really is meaningless.

13 MR. OH: Right.

14 THE COURT: And I am not sure just how sincere it  
15 is all the time because people disagree, quite properly, with  
16 what I am saying. So you don't have to preface what you  
17 say --

18 MR. OH: Thank you, your Honor.

19 THE COURT: -- with that demure.

20 MR. OH: I disagree, your Honor.

21 THE COURT: Okay.

22 MR. OH: I disagree in the sense that once notice  
23 goes out, you can't un-notice anybody. I mean --

24 THE COURT: So.

25 MR. OH: Well, the so is that on what I believe is

1 the flimsiest of evidence notice is going to go out to a  
2 couple thousand people that they can join this lawsuit. And  
3 if 30 percent of them join in, all of a sudden we have a  
4 lawsuit of not just five people -- but what is 30 percent of  
5 a couple thousand? And on the basis of what? On the basis  
6 of some declarations that are artfully drafted, conclusions  
7 and hearsay, I believe.

8           And part of the discovery that I would like to take  
9 at this point would be to test what they say in their  
10 declaration to see what basis, if any, they have for saying  
11 that all loss prevention managers around the country are  
12 working over 40 hours a week without proper compensation or  
13 that they are all performing the same duties or that in the  
14 declarations that they have listed where they have --

15           THE COURT: All that comes out in the wash. But  
16 again that is really nonresponsive to the question about how  
17 this lawsuit should get launched and how it should be in a  
18 situation in which there is no question that a failure to  
19 communicate at this point is something that if it turns out  
20 that the lawsuit has substance to it is going to deprive  
21 people of rights.

22           Whereas if it goes out and it turns out that it is  
23 a loser, then they haven't lost anything and all you have --  
24 all your client has lost is paying lawyers' fees. You know,  
25 but -- and that is not a basis for saying we are not going to

1 send out an appropriate notice.

2 I looked at the notice and it is -- it is really  
3 properly cautious. Mr. Werman has been around a long time on  
4 these and he knows I think mostly -- although I see some gap  
5 in this thing -- what at least is required in this Court for  
6 such notices. And they're -- they are appropriately  
7 cautionary in terms of not giving assurances to the people or  
8 the notified parties that they have really got a winner, or  
9 anything at all. It is -- it talks about how rights might be  
10 affected. And it talks about the fact that Sears, in a  
11 separate statement on the first page of the notice -- "Sears  
12 claims that it fully complied with all applicable laws and  
13 denies any wrongdoing." I mean it is full disclosure.

14 Now, I do have, as I say, two problems. They both  
15 exist on Page 2, if you take a look at it. And that has to  
16 do with the question of about where the -- what is an  
17 effective date. I always require, in order to avoid people  
18 coming out of the woodwork, that the person who sends in a  
19 joinder is responsible for delivery. So that postmark date  
20 is a loser. It creates the potential that some response may  
21 be -- may have been misdirected, and who knows how far down  
22 the road somebody comes along and says, "Well, I did send it  
23 in." And, therefore, you avoid that.

24 So the -- what should be done is to provide that it  
25 has to be -- they have to make sure that it is in the hands

1 of counsel by X date and that it is counsel's responsibility  
2 then to take care of the necessary filing. That way there is  
3 no potential for the kind of problem that I have talked  
4 about. And that requires a minor modification in the  
5 language in the first paragraph of Paragraph 4 which talks  
6 about "you must file a consent to be made a party with the  
7 Clerk of the Court" because the respondents are not taking  
8 care of it getting to the Clerk of the Court as such.

9 And then in the second paragraph there is a typo.  
10 The word "loss" should be "lost." Do you see that?

11 MR. OH: Yes, your Honor.

12 THE COURT: "Should the envelope be lost or  
13 misplaced."

14 MR. OH: With a small l as opposed to capital L.

15 THE COURT: Yeah, right.

16 And in the next paragraph the "if you complete" in  
17 the second and third lines at the very end of the line the  
18 "plaintiffs" is a possessive, so that ought to get an  
19 apostrophe. Okay.

20 In the paragraph numbered 5, your time to join is  
21 limited, that is the one that I am talking about that really  
22 needs modification to reflect the fact that -- instead of a  
23 postmark date but also making it clear that the  
24 responsibility for delivery is theirs. So that however they  
25 manage to get the thing to counsel is really the control

1 date.

2 And the last item that I noted on Page 2 is in  
3 Paragraph 6 in the second line where it says "or have any  
4 other way." That should say "or have in any other way." Do  
5 you see that?

6 MR. WERMAN: Yes, Judge.

7 THE COURT: Okay.

8 MR. OH: Your Honor, if I may.

9 THE COURT: Yes.

10 MR. OH: I would like an opportunity to file an  
11 opposition to this motion.

12 THE COURT: Oh, you can do that, but --

13 MR. OH: And I would like a sufficient amount of  
14 time to be able to get our ducks in a row to be able to do  
15 that as well. And --

16 THE COURT: Like what? You have already talked  
17 about your opposition. Why should you need more time? This  
18 has been going on for sometime.

19 MR. OH: This lawsuit or the motion has? The  
20 motion was just filed.

21 THE COURT: I know, I know. But you have known --

22 MR. OH: I think that in all fairness we should be  
23 given -- I don't know, 60 days to put together a response.

24 THE COURT: No, come on. Now, you know, that is  
25 really an affront, frankly. You don't need anything like

1 that. If you have any objections, you can articulate those  
2 very quickly. But I got to tell you that I have thought --

3 MR. OH: At least 30 days, your Honor.

4 THE COURT: -- I thought about this a lot. You  
5 know, this is not the first such lawsuit I have had and it is  
6 not the first one since the decision in Wal-Mart either  
7 which, you know, has its own sphere but doesn't necessarily  
8 govern this one. The notion that somehow industries get  
9 destroyed by this kind of thing is really an overstatement.

10 MR. OH: And I am not -- that is not the position I  
11 am taking, your Honor. I do think that -- and I will -- we  
12 -- I mean this lawsuit was filed back in July and they --  
13 took them three months to get this lawsuit on file. I am not  
14 asking for nearly that much time to put our opposition  
15 together to their motion.

16 THE COURT: Did you think -- did you think that  
17 they were not going to be asking for notice? You knew from  
18 day one they were going to be asking for notice, right?

19 MR. OH: Yes, I did.

20 THE COURT: You have had plenty of opportunity to  
21 think about and you have thought about --

22 MR. OH: We didn't know -- we did not know there  
23 would be opt-ins from the Kmart side of the house. We  
24 thought this was just a Sears matter that.

25 THE COURT: Of course, that really doesn't make any

1 change in substance at all. The concept that happens that  
2 whoever the people are -- it may or may not turn out that  
3 loss prevention people are doing the same thing. They may  
4 lose out on that. They may end up with a very small group.  
5 I don't know about that. And you don't know about that. But  
6 that is not a predicate for saying let's hold off. So I am  
7 certainly --

8 MR. OH: Could I -- could I --

9 THE COURT: I am certainly going to be willing to  
10 let you make your record, as they say, and I will give you  
11 14 days to do that. But in the meantime --

12 MR. OH: May I have 30, your Honor?

13 THE COURT: No, you don't need it. You know, come  
14 on. I used to practice law in the days before Noah's flood.  
15 I know what it takes. And you don't need it. And that is --  
16 that is just not justified. And this -- all of this, you  
17 know, casts a serious cloud on what kind of position Sears is  
18 and ought to be taking in connection with this one. You are  
19 not losing anything. Sears is not losing anything by reason  
20 of this notice going out. I don't know how to make that more  
21 plain. The notice itself makes that plain. And so the idea  
22 of stonewalling by --

23 MR. OH: Your Honor, I am not --

24 THE COURT: -- putting it out some extended period  
25 is not appealing. And I have told you that you can get your

1 ducks in a row, as you say. You can make your legal  
2 arguments by a filing in 14 days. But in the meantime I  
3 expect that the notice is going to be put together and it is  
4 going to be ready to go.

5 MR. WERMAN: Very good.

6 MR. OH: The other -- I do have a couple other  
7 issues with the notice, your Honor.

8 THE COURT: Yeah, tell me.

9 MR. OH: Okay. They ask for, number one, a 90-day  
10 period. And there have been other notices approved that have  
11 had 60-day notice periods is number one.

12 They have also asked --

13 THE COURT: Let me ask you, Mr. Werman, why do you  
14 think three months ought to -- once again if people -- when  
15 they are told that they may or may not have a claim, they get  
16 two months to file a response that says, if we can do it, we  
17 will do it. What is wrong with that?

18 MR. WERMAN: Potentially nothing, Judge. We have  
19 had 60-day notices approved. We have had 90-day notices.

20 THE COURT: All right.

21 MR. WERMAN: The 90-day notice -- the reason why we  
22 asked for 90 was that we were building into the schedule a  
23 time to provide a reminder notice.

24 THE COURT: Yes. You get 63 days, so it comes out  
25 on a weekday.



1 MR. WERMAN: Yes.

2 THE COURT: Okay?

3 MR. OH: Now, speaking of the reminder notice, I  
4 also was going to object to them sending out a reminder. I  
5 think one notice is sufficient for this time period.

6 THE COURT: Yeah, it -- I don't see --

7 MR. WERMAN: There is a case, Judge -- Judge -- the  
8 Bettencourt decision. Magistrate Judge Gilbert just issued  
9 that, and he provided for a reminder notice. It has been our  
10 experience in these cases we have had that the majority of  
11 the --

12 THE COURT: People just throw them away?

13 MR. WERMAN: They do, Judge. They do. And so we  
14 are trying to provide the best notice possible to provide the  
15 best opportunity for people to be informed to make an  
16 informed decision. That is all.

17 THE COURT: And who pays for the reminder?

18 MR. WERMAN: We do, Judge, the plaintiffs pay for  
19 all the notice.

20 THE COURT: Okay. I am not going to enlarge the  
21 63 days, but I am going to permit, for example, a reminder  
22 notice, let's say, with 14 days of that remaining. So that  
23 if people have either inadvertently or otherwise thrown them  
24 away, they will -- and choose to join, they have a right to  
25 join.

1 MR. OH: And, your Honor, I haven't seen this  
2 reminder notice, and so I would request --

3 THE COURT: Yeah, he can submit that to you and you  
4 can take a look at that.

5 MR. OH: And, your Honor, I don't want to give any  
6 wrong impression about what Sears' intent here is. I mean if  
7 we were stonewalling, we would not have picked up the phone  
8 and called them and tell them, here are the proper  
9 defendants, here is who should be in this case. I am just  
10 trying --

11 THE COURT: Yeah, I shouldn't be overly critical,  
12 but, you know, confidence is not inspired by the kinds of  
13 substantive arguments that have been advanced. I am  
14 certainly appreciative of the courtesies that you have  
15 extended to him, but that is a separate issue really.

16 Okay. Now let's -- wait just a minute.

17 MR. OH: So 14 days from today, your Honor, is the  
18 20th.

19 THE COURT: Yes, I know that. But wait just a  
20 minute. I was just seeing whether I had a next status date.  
21 I don't. So I am going to give Sears a response to be filed  
22 by October 20th. I am going to set a status date that would  
23 go past the anticipated 63 days. So allowing for time to get  
24 stuff together, I would think that maybe about two and a half  
25 months would be appropriate, which would put us into maybe

1 the week of December 19th through the 23rd for a status.

2 Now, that doesn't inhibit anybody from coming in on  
3 anything that may arise in the interim, but that is a status  
4 date that I am pegging that would be after the anticipated  
5 responses so we know what we are looking at. So in that week  
6 of the 19th through the 23rd --

7 MR. WERMAN: Judge, I am going to actually be out  
8 of town that whole week.

9 THE COURT: Are you going to be back the next week?

10 MR. WERMAN: Yes, Judge.

11 THE COURT: Okay. In the week of December 26,  
12 which I think is probably the holiday, the observed  
13 holiday -- so in the week of December 27th through the 30th,  
14 any day better or worse for either of you?

15 MR. WERMAN: The 28th is -- I am going to be back.

16 THE COURT: That is Wednesday?

17 MR. WERMAN: Yeah, that is a Wednesday.

18 THE COURT: Is that okay for you, counsel?

19 MR. OH: Yes, your Honor.

20 THE COURT: All right. Status then 9:00 o'clock  
21 December 28th.

22 MR. WERMAN: Judge, if you are anticipating the  
23 notice going out on sufficient time so that we know the  
24 number of opt-ins by December 28th, is there a date by which  
25 Sears need to be providing to us the list of employees?

1 THE COURT: How soon can you put that together?

2 MR. OH: I will find out today and let Mr. Werman  
3 know. I can't -- I don't have an answer right now.

4 THE COURT: Okay. But you ought to do that  
5 promptly.

6 MR. OH: Yes, your Honor.

7 THE COURT: And I will rely on both of you to be  
8 cooperating on that. Okay?

9 MR. WERMAN: Thanks, Judge.

10 THE COURT: Thank you.

11 MR. OH: Thanks.

12 THE CLERK: Are you granting leave to file an  
13 amended complaint?

14 THE COURT: Yeah, I hate to issue a blank check,  
15 but I am going to give you leave to file an amended complaint  
16 to get the right ducks in a row.

17 MR. WERMAN: Very good.

18 THE COURT: Okay?

19 MR. WERMAN: Thank you, Judge.

20 MR. OH: Thanks.

21 (Which were all the proceedings heard.)  
22  
23  
24  
25

CERTIFICATE

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

s/Rosemary Scarpelli/

Date: October 6, 2011

# **EXHIBIT D**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

ROBERT O'TOOLE, et al.,

Plaintiffs,

-vs-

SEARS HOLDINGS MANAGEMENT  
CORPORATION, et al.,

Defendants.

No. 11 C 4611

Chicago, Illinois  
October 26, 2011  
9:30 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS - STATUS  
BEFORE THE HONORABLE MILTON I. SHADUR

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1 THE CLERK: 11 C 4611, O'Toole versus Sears.

2 THE COURT: Which one?

3 THE CLERK: O'Toole. Remember this is the one we  
4 talked about this morning. They were asking for --

5 THE COURT: Oh, geez, I left O'Toole out in --

6 MR. WERMAN: Good morning, Judge.

7 MR. OH: Good morning.

8 MR. WERMAN: Doug Werman, W-E-R-M-A-N, for the  
9 plaintiffs.

10 MR. JOSEPHSON: Michael Josephson for the  
11 plaintiffs.

12 MR. OH: James Oh for the defendants.

13 THE COURT: Wait just a minute. I left the latest  
14 O'Toole filing in chambers. I will get it right now.

15 (Brief pause.)

16 THE COURT: Well, counsel, as you know, defendant's  
17 essential response is that they are perfectly prepared,  
18 because we were all concerned about limitations that would be  
19 running the way this kind of action runs. They are saying,  
20 look, we are prepared to stipulate that the limitations  
21 period is told. I am a little troubled because they have  
22 said now rather than, for example, going back to when the  
23 motion is filed.

24 MR. OH: We would do that too, your Honor.

25 THE COURT: Pardon?



1 MR. OH: We would do that if your Honor thought  
2 that was --

3 THE COURT: Okay. Now let me ask Mr. Werman. They  
4 are saying that before 2200 or 2300 people are circulated, as  
5 long as there is no arguable harm to them because limitations  
6 are told in much the same way as in a general class actions.  
7 As you know, the pendency is enough to prevent people from  
8 being pardoned by limitations in the interim.

9 What is wrong with their response, if anything?

10 MR. WERMAN: Well, the question is whether or not  
11 notice should issue to these employees because they were all  
12 subjected to the same policy, which is the denial of the  
13 overtime pay. There is no question I think they acknowledged  
14 it when we were here. And we provided evidentiary support as  
15 part of our motion now.

16 THE COURT: Well, on that score it seems to me --  
17 as chance would have it yesterday I gave a -- "A view from  
18 the Bench, a two-day national conference on class actions,  
19 you know, so I was talking as you might guess, about this  
20 kind of problem. And in Wal-Mart in general class actions  
21 has really changed the -- changed the dynamics and the  
22 scenery entirely.

23 But if they -- well, let me put it a little  
24 differently. If there is an arguable predicate for saying  
25 that what you have just said, that is, being subjected to the

1 same conditions and the same category, then it seems to me  
2 that it is appropriate to err on the side of a general  
3 communication.

4 If, however, as a result of what they are talking  
5 about, some discovery -- and I would not think it should be  
6 too long -- they are able to demonstrate that that is not  
7 true, that there is really a smaller set, then I think we  
8 ought to look at that because I think that would be  
9 responsible. Meanwhile, as I say, your people are not being  
10 harmed.

11 So I am prepared to accept their response in  
12 opposition, but I don't think it ought to string out very  
13 long. So tell me how long you think it is going to take you  
14 to do whatever discovery you are talking about. I am not  
15 exactly clear as to what you would expect to do.

16 MR. OH: I have not had the chance to confer with  
17 my opposing counsel on this, your Honor, but some general  
18 thoughts I had in mind were to do some limited document  
19 discovery on the notice issue, take the depositions of the  
20 five people who have joined the case up to this point. I am  
21 sure that the plaintiffs' counsel might want to --

22 THE COURT: Well, wait just a minute. You are  
23 talking about discovery. Are you going to be -- are you  
24 addressing typicality or commonality, or what are you  
25 addressing?

1           MR. OH: It would be the -- whether or not they are  
2 similarly situated under 216(b) of the Fair Labor Standards  
3 Act, your Honor.

4           MR. WERMAN: Judge, I think it is important to  
5 remember this is not a Rule 23 case.

6           THE COURT: Right.

7           MR. WERMAN: This is a 216(b) case.

8           THE COURT: This is a 216(b), right?

9           MR. WERMAN: Right. And so the evidentiary  
10 showing, if any -- because remember the 7th Circuit has  
11 stated that a District Court cannot deny the issuance of  
12 notice altogether. The evidentiary showing that is required  
13 under 216(b) is entirely different than under a Rule 23.

14          THE COURT: Right. I know that.

15          MR. WERMAN: And when we here -- if it was the last  
16 time or two times ago, the Court was really clear that Sears  
17 already has the black box. It already knows --

18          THE COURT: Yeah.

19          MR. WERMAN: -- what --

20          THE COURT: Well, let me try again. If -- is that  
21 the kind of discovery you are really talking about?

22          MR. OH: Your Honor, we had pointed out in our  
23 papers that the named plaintiff for part of the statute of  
24 limitations period was actually classified as a nonexempt  
25 employee. The two other --

1           THE COURT: Yeah, but that is a self-defined thing.  
2       That is not -- that doesn't create the law.

3           MR. OH: But --

4           THE COURT: It says -- it says, "We thought so."  
5       But your thinking so didn't make it so.

6           MR. OH: But there is a modest factual showing that  
7       does need to be made under Circuit authority, and we submit  
8       that the declarations that were submitted don't rise to that  
9       level in and of themselves. And there is a difference --  
10      there is a material difference between the named plaintiff  
11      and the two other people who submitted declarations. And  
12      there is also a difference between those three and the two  
13      others who have joined this case who did not submit  
14      declarations.

15          THE COURT: Well, you say there is a difference.  
16      We have all heard the phrase "distinction without a  
17      difference." You are talking about distinctions. I am not  
18      sure that that constitutes a difference in those terms in the  
19      legal sense.

20          MR. OH: But all we are asking for --

21          THE COURT: If you are -- if you are just saying  
22      that you are going to point out that the characterization  
23      that you people had made that defendant or defendants -- I am  
24      not sure which it was -- on the -- among the three people is  
25      something that should make a difference in terms of whether

1 the potential opt-ins ought to be circulated, that is not  
2 particularly convincing. I didn't know that that was the  
3 kind of discovery you are talking about.

4 MR. OH: The other -- the other points that we  
5 made, your Honor, is that there are actually two exemptions  
6 in play here. There is the executive exemption and  
7 administrative exemption.

8 THE COURT: Yeah.

9 MR. OH: And there are some people who would  
10 potentially receive notice who were loss prevention managers  
11 over multiple different stores as opposed to Mr. O'Toole.

12 THE COURT: Well, let's try again. The fact that  
13 somebody gets notice and may make a claim, for example,  
14 doesn't get that person locked in as a potential plaintiff  
15 entitled to recover because that is the whole purpose of  
16 sending out notice and getting responses, that is, you get --  
17 then you get factual information about whether the people  
18 would qualify, for example, for an administrative or an  
19 executive exemption. But the only way you know that is not  
20 by your discovery in connection with these -- the current  
21 opt-ins. I don't understand that one at all.

22 MR. OH: But I think --

23 THE COURT: If that is the predicate for it, you  
24 don't get it.

25 MR. OH: But I think your Honor was absolutely

1 correct in saying before notice goes out to 2,882 people  
2 there needs to be more --

3 THE COURT: Who is paying?

4 MR. WERMAN: Plaintiffs are paying.

5 THE COURT: Plaintiffs are paying.

6 MR. OH: There is --

7 THE COURT: You know, so -- and notice -- the  
8 notices always say very carefully this does not tell you you  
9 have got a claim, and the Court hasn't made any judgment  
10 about it, and the defendants deny it. So, you know, it is  
11 full -- it is full disclosure. I just -- nobody can claim to  
12 have been misled by reason of receiving the notice.

13 MR. OH: No. And we have agreed to the notice  
14 language, your Honor. We worked that out since the last time  
15 we are here. So there is no issue about what is stated in  
16 the notice. The question is of whether or not the notice  
17 even should go out when there are clear and factual  
18 differences between the individuals who have already joined  
19 the case.

20 THE COURT: Yeah, but those we find out when we get  
21 the answers.

22 MR. WERMAN: Yeah. Judge, this is -- all the  
23 discovery that he is talking about is merits discovery that  
24 is step two of this process. And --

25 MR. OH: It is not all --

1           THE COURT: I am sorry, I have not understood that  
2 that was the class -- that is a bad pun -- that was the kinds  
3 of discovery that you were talking about. If that is it,  
4 then you are -- there is no reason to hold off. Let the  
5 notices go out. It may turn out that 2,100 of the people  
6 don't qualify. And if so, too bad for them. But plaintiffs  
7 are paying, so you can't -- I don't think you can complain  
8 about that. You know --

9           MR. OH: Your Honor --

10          THE COURT: -- if the natives -- if the natives are  
11 made restless by reason of having received notices, but it  
12 turns out that they don't have a claim, well, you know, that  
13 is life. I don't -- I just don't see that as a basis. I am  
14 going to grant the transmittal we have already talked about  
15 form.

16          MR. WERMAN: Yeah. Judge, on October 20th the --  
17 we filed the notice documents that had been agreed to by the  
18 parties, so we acknowledged a class list.

19          THE COURT: Did I -- did I mark that one up for you  
20 or not?

21          MR. WERMAN: We -- the last time we were here you  
22 proposed or told us the changes you wanted to have made to  
23 it. And we made --

24          THE COURT: I told you the changes. I did mark it  
25 up.

1 MR. WERMAN: And we made those. We filed that on  
2 October 20th.

3 THE COURT: Okay. All right. So the motion for  
4 notice to potential class members, which is a -- an  
5 inaccurate characterization under Rule 216(b), potential  
6 plaintiffs, opt-ins, under rule -- under Section 216(b) is  
7 granted.

8 Now, how long is it -- have you -- you haven't  
9 received a printout of the whole works, right?

10 MR. WERMAN: We do not have the class list yet,  
11 Judge.

12 THE COURT: Okay. How long is that going to take  
13 you to put together?

14 MR. OH: One second.

15 THE COURT: Yeah.

16 MR. OH: Your Honor, I will hand over this class  
17 list that is on this CD right now.

18 THE COURT: Okay. Now, how long is it going to  
19 take to get the -- well, that is on part of it. What about  
20 yours?

21 MR. JOSEPHSON: The -- to get the notice out -- you  
22 are asking me how long it is going to take to get the notice  
23 issued to the class members?

24 THE COURT: No, how -- the list. Is that both?

25 MR. JOSEPHSON: Yeah, Mr. Oh --



1 THE COURT: Is that for both?

2 MR. JOSEPHSON: This is -- Mr. Oh represented to us  
3 last week that he would have the list.

4 THE COURT: Is that for Sears and Kmart, right?

5 MR. OH: Kmart.

6 MR. JOSEPHSON: I haven't had a chance to look at  
7 it, obviously.

8 MR. OH: It should be.

9 MR. JOSEPHSON: But I trust that it is what he says  
10 it is.

11 THE COURT: All right. So --

12 MR. OH: It should be 2,882 names of Sears and  
13 Kmart.

14 THE COURT: As a matter of mechanics -- I am  
15 talking to Mr. Werman now -- to implement that and send the  
16 thing out and get the responses back?

17 MR. WERMAN: Yeah. I think a week from Friday we  
18 can have that out. A week from this Friday.

19 THE COURT: And you are add -- giving them, what,  
20 63 days?

21 MR. WERMAN: Exactly.

22 THE COURT: All right. So wait a minute. So you  
23 would be getting it out on November 4th, right?

24 MR. WERMAN: Yes, Judge.

25 THE COURT: So that put the response date just not

1 long after January 1st. It would be January -- about  
2 January 6. So let me set a status in the week after that,  
3 which would be January 9th through the 13th. And in that  
4 week you can take your choice. Any preference?

5 MR. WERMAN: No, Judge, any time that week.

6 MR. JOSEPHSON: Can we do the Wednesday of that  
7 week?

8 THE COURT: Wednesday is fine.

9 MR. JOSEPHSON: Okay.

10 THE COURT: So Wednesday, January 11th.

11 MR. OH: Your Honor, there is a status date  
12 currently scheduled for December 28th.

13 THE COURT: I am going to vacate that, yeah.  
14 Wait just a minute. So it is going to be  
15 January 11, 2012 at 9:00 o'clock.

16 Thank you.

17 MR. WERMAN: Thanks, Judge.

18 MR. JOSEPHSON: Thank you, your Honor.

19 MR. OH: Thank you, your Honor.

20 (Which were all the proceedings heard.)

21 CERTIFICATE

22 I certify that the foregoing is a correct transcript  
23 from the record of proceedings in the above-entitled matter.

24

25 s/Rosemary Scarpelli/ Date: November 7, 2011